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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD R. GATES,

Plaintiff,

vs.

ROBERT LEGRAND, et al.,

Defendants.

Case No. 3:16-cv-00401-MMD-CBC

**DEFENDANTS' MOTION FOR EXTENSION OF
TIME TO FILE DISPOSITIVE MOTION
(FIRST REQUEST)**

Defendants Romeo Aranas and Don Poag by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Joshua M. Halen, Deputy Attorney General, move for an enlargement of time to file a dispositive motion. This Motion is based on the following Memorandum of Points and Authorities and all papers and pleadings on file in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LAW AND ARGUMENT

This is a prisoner civil rights action brought by Plaintiff Richard Gates ("Plaintiff"), pursuant to 42 U.S.C. § 1983 and the Eighth Amendment to the U.S. Constitution. Plaintiff is an inmate in the custody of the Nevada Department of Corrections ("NDOC"), currently housed at Lovelock Correctional Center ("LCC"). The Court has allowed Plaintiff to proceed with an Eighth Amendment deliberate indifference to serious medical needs claim based on alleged trouble he had obtaining his medication. Plaintiff has sued NDOC Director of Nursing Poag and NDOC Medical Director Dr. Aranas for responding to his grievance.

1 On November 6, 2018, the Court issued its order granting Plaintiff's motion for extension of
2 time to complete discovery. (ECF No. 29.) The Court scheduled January 4, 2019, as the discovery
3 completion date and February 4, 2019, as the dispositive motions deadline. (*Id.*)

4 On January 3, 2019, Plaintiff filed his Second Request for Extension of Time ("Second
5 Request") and requested that the discovery deadline be extended forty-five days. (ECF No. 31.)
6 Defendants filed their Opposition to Plaintiff's Second Request (ECF No. 32) and Plaintiff filed his
7 Reply on January 22, 2019 (ECF No. 33). As of the date of this Motion, the Court has not ruled on
8 Plaintiff's Second Request.

9 As Plaintiff's Second Request regarding the extension of the discovery deadline is still outstanding,
10 Defendants request that the dispositive motions deadline be extended. Defendants request that the
11 dispositive motions deadline be extended 30 days after the Court denies Plaintiff's Second Request, if the
12 Court denies the Second Request. Should the Court grant Plaintiff's Second Request, Defendants request
13 that the dispositive motions deadline be extended until 30 days after the new discovery completion
14 deadline.

15 Federal Rule of Civil Procedure 6(b)(1) governs enlargements of time and provides as follows:

16 When an act may or must be done within a specified time, the court may,
17 for good cause, extend the time: (A) with or without motion or notice if
18 the court acts, or if a request is made, before the original time or its
extension expires; or (B) on motion made after the time has expired if the
party failed to act because of excusable neglect.

19 The proper procedure, when additional time for any purpose is needed, is to present a request for
20 extension of time before the time fixed has expired. *Canup v. Miss. Val. Barge Line Co.*, 31 F.R.D. 282
21 (W.D. Pa. 1962). Extensions of time may always be asked for, and usually are granted on a showing of
22 good cause if timely made under subdivision (b)(1) of the Rule. *Creedon v. Taubman*, 8 F.R.D. 268 (N.D.
23 Ohio 1947).

24 Defendant seeks an enlargement of time to file a dispositive motion. Good cause exists to extend
25 the time to file this motion. The extension of time is needed as Plaintiff has filed a Second Request to
26 extend the discovery deadline and that Request has not been ruled on as of the date of this Motion. Plaintiff
27 filed his Second Request to extend the discovery deadline one day before the current deadline, as opposed
28 to 21 days as the Local Rules require. As such, Plaintiff's Second Request has not been ruled on by the

1 Court and it is unclear whether Defendants will be required to continue with discovery or file a dispositive
2 motion. Accordingly, Defendants request an extension of time to file a dispositive motion. Defendants
3 request that if Plaintiff's Second Request is denied, the dispositive motions deadline be extended to 30
4 days after the Court denies Plaintiff's Second Request. If the Court grants Plaintiff's Second Request and
5 extends the discovery completion deadline, Defendants request that the dispositive motions deadline be
6 extended to 30 days after the new discovery completion deadline. Plaintiff will not be prejudiced the
7 granting of this Motion. This request is made in good faith and is not for the purposes of delay.

8 **II. CONCLUSION**

9 Based on the foregoing, Defendants respectfully request an extension of time to file a dispositive
10 motion. Defendants request that if Plaintiff's Second Request for Extension of Time is denied, the
11 dispositive motions deadline be extended to 30 days after the Court denies Plaintiff's Second Request. If
12 the Court grants Plaintiff's Second Request and extends the discovery completion deadline, Defendants
13 request that the dispositive motions deadline be extended to 30 days after the new discovery completion
14 deadline.

15 DATED this 4th day of February, 2019.

16 AARON D. FORD
17 Attorney General

18 By:

19 JOSHUA M. HALEN
20 Deputy Attorney General
21 State of Nevada
22 Bureau of Litigation
23 Public Safety Division

Attorneys for Defendant

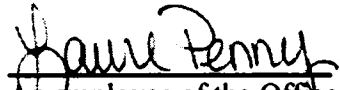
24
25 IT IS SO ORDERED
26 
27 U.S. MAGISTRATE JUDGE

28 DATED: 2/6/2019

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 4th day of February, 2019, I caused to be served a copy of the foregoing, **DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE DISPOSITIVE MOTION (FIRST REQUEST)**, by U.S. District Court CM/CFE Electronic Filing to:

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An employee of the Office
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